JUVENILE RIGHTS PROJECT

JUVENILE LAW READER

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KANSAS SUPREME COURT: JUVENILES HAVE CONSTITUTIONAL RIGHT TO JURY TRIAL

By Celeste Miller, Law Clerk

The Supreme Court of Kansas recently concluded that a juvenile's right to jury trial is constitutionally protected, thus holding that the Kansas statute allowing the district court complete discretion in determining whether a juvenile should be granted a jury trial was unconstitutional. Kansas is now among the small yet pioneering group of states that uphold this right for juveniles. The reasoning behind the court's ruling was that "[c]hanges to the Kansas Juvenile Justice Code since 1984 have eroded the benevolent, child-cognizant, rehabilitative, and *parens patriae* character that distinguished it from the adult criminal system." *In re L.M.*, 186 P.3d 164, 165 (2008). The Kansas Supreme Court found in *In re L.M* that the Revised Kansas Juvenile Justice Code "applied adult standards of criminal procedure and removed paternalistic protections, yet denied juveniles the constitutional right to a jury trial." 186 P.3d at 171. In the opinion, the justices also noted that the Juvenile Code incorporated language found in the Kansas Criminal Code, such as "sentencing proceeding" to replace "dispositional proceeding," and "juvenile correctional facility" to replace "state youth center." *In re L.M.*, 186 P.3d at 169.

L.M., a sixteen year old male, was charged and prosecuted with one count of aggravated sexual battery and one count of minor in possession of alcohol. He requested a jury trial but the trial court denied his request. He was then found guilty and sentenced as a Serious Offender to 18 months in a juvenile correctional facility. However, the court then stayed his sentence and placed him on probation until he was 20 years old, and required him to register as a sex offender and complete sex offender treatment. L.M. appealed to the Court of Appeals, claiming that he had a constitutional right to a jury trial, that his statements to police should have been suppressed, and that the evidence was not sufficient to support his convictions. The Court of Appeals affirmed the district court's decision. L.M. then petitioned the Kansas Supreme Court on the sole issue of whether he had a constitutional right to a jury trial as a juvenile offender.

Continued on p. 3

OYA Director Resigns

Bob Jester, Director of the Oregon Youth Authority (OYA), has resigned, effective October 1, 2008, following submission of an investigative report to Gov. Ted Kulongoski. The investigative report addressed the OYA administration's response to wrongdoing at the RiverBend Youth Transitional Program in LaGrande. The investigation was conducted following reporting by *The Oregonian* about complaints about former RiverBend superintendent, Darrin Humphreys.

The OSP investigation of Humphreys led to his indictment on numerous counts of theft, fraud and official misconduct arising out of allegations which included that Humphreys had used state roofing materials to re-roof his personal residence, and had his kitchen cabinets installed by youth incarcerated at RiverBend.

Continued on p. 4

Inside this issue:

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NEWS BRIEFS

ABA Resolution Calls for Reform in Child Welfare-Delinquency "Crossover" Cases

In February, the American Bar Association issued a policy resolution and report calling for greater assistance for children who are involved in both the dependency and delinquency systems. Among the recommendations are establishing clear legal authority for continued child welfare agency support when there is a "crossover" to the juvenile delinquency court, legal authority for dual dependency-delinquency proceedings when necessary, and continuity of judges and legal representation. The policy resolution can be accessed at: http://www.abanet.org/youthatrisk/crossoveryouthpolicy.html

When is a Kid a Kid?

The Oregon State Bar Bulletin's May 2008 issue includes as it's cover article "When is a Kid a Kid?" by Janine Robben. The article examines the difficult question posed in the title when it comes to various state and national laws. The short answer is that it depends.

Adolescent Brain Research:

The article points out that the "statutory ages for the acquisition of juvenile rights and responsibilities were set long before research into adolescent brain development." Recent research on brain development shows that teenagers do not have a fully developed prefrontal cortex, which is the part of the brain that controls foresight, planning and judgment. The prefrontal cortex is not fully developed in females until age 22 to 23, and in males not until age 25 to 27, at the earliest.

Foster Care = Adult at 18

The lack of brain development and maturity presents special difficulties for children who have grown up in foster care and are expected to be on their own often by age 18 with little or no adult support. These children are likely to be educationally delayed and their life experiences may have caused developmental delays. "Foster kids are the *least* able to care for themselves at 18." In contrast, children who grow up in stable, nurturing homes their whole lives are not usually completely on their own at age 18.

Juvenile Justice = Adult at 15

Prior to 1967, the theory was that children did not need representation or due process because adults would protect their rights. Then came the United States Supreme Court's decision in *In re Gault*, (387 U.S. 1), declaring that many of the 14th Amendment's due process rights apply to juveniles charged with crimes in juvenile court.

Oregon voters passed Ballot Measure 11 in 1994. Before enactment, a juvenile under the age of 18 who allegedly committed a crime could be handled informally or formally, depending on the particular characteristics of the case and the child. As the article points out youth were only "sent to adult court for trial if the judge or referee had found that to be the proper venue for that particular juvenile and crime." After enactment, children aged 15 and over charged with certain crimes must automatically be tried and sentenced as adults. District Attorneys do still have some discretion, though, and Klamath County District Attorney Ed Caleb says that

(continued, next page)

Jury Trials for Juveniles — Continued from page 1

The Kansas Supreme Court found that L.M. did have a U.S. and state constitutionally protected right to a jury trial. It reconsidered the U.S. Supreme Court's decision 37 years ago in *McKeiver v. Pennsylvania,* 403 U.S. 528 (1971) (where a plurality of the Court held that juveniles are not entitled to a jury trial under the Sixth and Fourteenth Amendments to the Constitution), and its own decision 24 years ago in *Findlay v. State,* 235 Kan. 462 (1984), in which it held that juvenile justice proceedings were not criminal trials due to the protective and rehabilitative character of the juvenile justice system.

However, because the Kansas juvenile justice system is now patterned after the adult criminal system, the Kansas Supreme Court concluded that the changes had superseded the *McKiever* and *Findlay* Courts' reasoning and those decisions were no longer binding precedent. Based on its conclusion that the Kansas juvenile justice system had become more akin to an adult criminal prosecution, the Court held that juveniles have a constitutional right to a jury trial under the Sixth and Fourteenth Amendments. *In re L.M.,* 186 P.3d at 170.

Although L.M. argued that he should also receive a jury trial because he was subject to the adult sanction of registering as a sex offender, the court declined to analyze this argument since it ruled that all juveniles have a constitutionally protected right to a jury trial. L.M.'s argument is worth noting however, because he was convicted as a Serious Offender by the District Court. The U.S. Supreme Court held in *Duncan v. Louisiana*, 391 U.S. 145 (1968) that the Sixth Amendment requires a jury trial to be provided in cases of serious offenses. It will be interesting to see how this type of argument and other arguments regarding a juvenile's right to trial by jury fare in different states that follow Kansas' lead in the coming years.

The *In re L.M.* decision can be accessed at: http://www.kscourts.org/CasesandOpinions/opinions/supct/2008/20080620/96197.htm

NEWS BRIEFS—CONTINUED FROM PAGE 2

"It *could* have been a disaster. It hasn't been because most DAs take it very, very seriously. . . . Most of the DAs I know are not comfortable sending juveniles to a state training facility under Measure 11."

Inconsistencies

Children do have some rights under the age of 18, but there is no overarching logic to which rights are given to children. Minors under 18 can't vote, but children in Oregon under the age of 9 can pick berries or beans. 16 year-olds can get a drivers license. Children who get pregnant can opt for an abortion or adoption, and those who have babies can make medical decisions for their babies, and under certain circumstances, a 12 year-old can decide whether or not to be circumcised as part of his conversion to Judaism [Oregon Supreme Court's recent decision in *Boldt v. Boldt*, 176 P3d 288 (2008)]. In Oregon, a child of 17 can get married with parental consent.

The article strongly suggests that looking for a pattern is futile, as many rights were acquired on a piecemeal basis. Certainly, the statutory rights and responsibilities of children are not so far based on social science or brain research which shows that none of us are mature at the magical age of 18.

OYA, from page 1.

The Department of Corrections investigation focused on the handling of the misconduct, and also reviewed information from an administrative review team [the RiverBend Review Team (RBRT), which was comprised of OYA employees]. Complaints reviewed by the RBRT included OYA employees' perception of strong personal relationships between Humphreys and OYA senior managers and complaints that some staff feared for their personal safety and may be securing firearms in their vehicles in the event Humphreys would approach them.

Director Jester told The Oregonian: "It has become increasingly clear to me that my presence as director of the Oregon Youth Authority will be an ongoing distraction and impediment to this agency moving forward and accomplishing its mission."

Former DHS Director, Bobby Mink will serve as interim director of OYA.

http://blog.oregonlive.com/breakingnews/2008/07/head_of_oregon_youth_authority_1.html

Issue Brief: Racial Equity and Subsidized Guardianship

In December 2005, the Cornerstone Consulting Group's National Collaboration to Promote Permanency through Subsidized Guardianship, the Casey Center for the Study of Social Policy Alliance for Racial Equity, and the Children's Defense Fund held a conference to discuss racial and ethnic disproportionality and disparities in the child welfare system. After the conference, an issue brief was written by Cornerstone Consulting Group to address the issues raised at the conference, and guide the next phase of discussion.

The brief notes that disproportionate representation among minority children continues to be a persistent problem in child welfare, despite studies showing no significant differences in maltreatment rates between different racial and ethnic groups. Once in the foster care system, families of color receive fewer services, have less contact with child welfare workers, and experience lower reunification rates with their children than white families. Children of color are also overrepresented in kinship care, possibly due to the racial disparities that result from the policies of the child welfare system.

The Casey Alliance on Racial Equity has proposed a theory of change that offers six different "critical levers" that must be pushed simultaneously to achieve real results for children and families of color and the child welfare system:

1. legislation, policy change and finance reform;
2. research, evaluation, and data-based decision making;
3. youth, parent, and community partnership and development;
4. public will and communications;
5. human service workforce development; and
6. practice change (site-based implementation).

The brief also discusses subsidized guardianship as a promising option to alleviate racial and ethnic disproportionality and disparities. Guardianship is an increasingly viable option as it allows for permanency, combined with the benefits of allowing for the maintenance of family bonds with the biological parents, honoring the wishes of an older child who does not wish to be adopted, respecting the cultural norms of an extended family, and limiting state interference in a family's life. Offering financial assistance through subsidized guardianship allows families to attain all of the benefits discussed above, while still receiving important financial assistance that is traditionally absent in kinship caregiving situations to help to meet the child's needs.

The issue brief can be accessed at: http://www.jimcaseyyouth.org/docs/racial_equality.pdf

Continuing in Foster Care Beyond Age 18

The Chapin Hall Center for Children has released a new issue brief addressing the importance of court advocacy to keep youth in foster care after they turn 18 years of age. The brief cites compelling evidence that foster children who stay in care after 18 experience fewer negative outcomes and have more positive outcomes than youth leaving care at or near 18. Youth who stay in foster care are more likely to complete high school and college, have better access to health care and lower rates of unemployment, homelessness and incarnation.

Court advocacy for youth to remain in care, greater awareness that the law allows for youth to remain in foster care beyond the age of 18, greater availability of placement and services for older foster youth, more involvement by supportive adults and more positive attitudes about remaining in care beyond 18 were cited as reasons that some youth leave care at 18 and others do not.

Chapin Hall publications can be downloaded at: www.chapinhall.org

Save the Date!

Juvenile Law Training Academy

You won't want to miss the fourth annual **Juvenile Law Training Academy** seminar scheduled for **October 13 and 14, 2008** (during the Oregon Judicial Conference). This seminar should be of interest to juvenile lawyers across the state and from all sides and will focus on **expert witnesses** on mental health conditions, domestic violence, and physical abuse. Speakers will be examining science, law, and how to make the most effective use of expert testimony in cases involving these issues.

The two-day seminar will be in Eugene again, and the workgroup hopes to make it available again at an affordable cost.

For updates, please check the OSB Juvenile Law Section website at http://www.osb-jl.org/.

State v. Bordeaux, 220 Or App 165, 2008 Or App LEXIS 698, (May 21, 2008): In this case, a father abused his infant son resulting in second degree burns on his face. He then lied about the cause of injury to medical personnel in the emergency room. Among other charges, the state prosecuted him under ORS 163.205(1)(a), for "intentionally or knowingly withholding medical attention" for his son. The state argued that because child abuse is a medical diagnosis, the father's failure to inform medical personnel about the true cause of his injuries constituted withholding necessary and adequate medical attention from the infant that would have led to the diagnosis of child abuse. At trial, the state prevailed and father appealed.

Because the language in ORS 163.205(1)(a) is ambiguous, the Court of Appeals looked at two maxims of statutory construction: first, the assumption that the legislature did not intend an unreasonable result; second, avoiding constitutional issues. If the statute were interpreted according to the state's proposed reading, it would essentially require a person to confess to one crime (abusing a child) to avoid being guilty of another (withholding medical attention). It would also require an abusive parent to bring a child in for treatment of child abuse, even if the child was not otherwise in need of medical care. This raises constitutional issues of self-incrimination, and creates a disincentive for parents to seek medical treatment for abused children. The Court of Appeals assumes the legislature did not intend these results and reversed and remanded on this count. Failure to disclose the cause of a child's injuries to medical staff does not constitute withholding necessary and adequate medical attention for the purposes of a criminal mistreatment conviction under ORS 163.205(1)(a).

***State ex rel Juvenile Dept. v. J.L.M.*, 184 P.3d 1203, (May 14, 2008):** Father appealed a judgment terminating his parental rights to his eight year old son. Father's drug abuse history dated back into his teen years. Child was born in 2000. Father and mother's relationship was marked by domestic violence. In 2002, child and his siblings were removed from the home due to father's methamphetamine use and the dirty and unsafe condition of the home. Child was eventually returned to mother, but came back into care when child required hospitalization for severe behavioral problems. Father did not engage in services in the two years following child's removal, and was eventually incarcerated from 2004 to 2006. Father had no direct contact with child for over four years prior to trial. Father successfully completed a drug treatment program in prison, but after release, failed to engage in recommended after care or parenting classes, and lied to his parole officer about his after-care and urinalysis tests. Trial occurred six months after father's release from prison, and five years after child was first taken into custody. The Juvenile Court found that father was unfit and terminated his parental rights. The Court of Appeals affirmed, finding that DHS had demonstrated father's failure to address his drug addiction to make it possible for child to return home within a reasonable time. The Court also noted that father was unfit due to his continuing anger management problems, unstable living situation, lack of demonstrated parenting skills and relationship with child, and that child had expressed fear at the thought of living with father. In determining best interests, the Court also found that child, who had been subjected to eleven placements, had made excellent progress in the care of his foster parents, was securely attached to them, and wanted to be adopted by them. Affirmed.

***State v. Alne*, 184 P.3d 1164 (May 7, 2008):** Defendant was convicted of one count each of first-degree sodomy, first-degree unlawful sexual penetration, and first-degree sexual abuse, all relating to a four year old girl, C. C participated in a videotaped interview with CARES, and the videotape was admitted as an exhibit and viewed by the trial court. The social worker who interviewed C also testified at trial. At the time of trial, C was found not to be competent to testify. Defendant filed a motion for a new trial, which was denied. On appeal, defendant raised a number of assignments of error, but the Court of Appeals decided the case based only on defendant's *Crawford*-based Confrontation Clause claim. The Court concluded that the trial court committed plain error in admitting C's out-of-court statements through the testimony of the CARES personnel and the videotape. The Court determined that the error was not harmless, because the court relied on the videotape, C's statements to the CARES examiner were more graphic and detailed than her statements to anyone else, and there was no physical evidence of the charged crimes. Reversed and remanded.

***State v. Francisco Valladares-Juarez*, 184 P.3d 1131, (May 7, 2008):** Defendant was convicted of two counts of first-degree kidnapping under two alternative theories of proving the same offense. Defendant appealed, assigning error to the trial court's failure to merge the two convictions. The Court of Appeals agreed that the failure to merge constituted error apparent on the face of

(Continued, p. 10)

Faith Healing—Can a Minor Refuse Medical Treatment?

By Annette Smith, Law Clerk

In Oregon a person must be eighteen to vote, marry, join the military, or sign most contracts. But recently, an Oregon youth challenged the limits of his legal rights when he refused life-saving medical treatment, choosing to rely solely on faith-healing.[1] Neil Jeffrey Beagley, 16, died in June of 2008 from a urinary-tract blockage he apparently suffered with for years. The blockage damaged his kidneys until they failed, which lead to uremic poising and heart failure. The shock of his death brought familiar outcries—less than four months ago, Beagley's fifteen-month-old niece, Ava Worthington, died under similar circumstances.

The family belongs to the Followers of Christ Church, a nondenominational congregation that favors spiritual-healing over traditional medical treatment. Beagley's aunt and uncle are facing charges of manslaughter and criminal mistreatment for the death of their daughter—but it is unclear whether Beagley's parents will similarly be charged.

Oregon statute grants youths fifteen and older the right to seek medical treatment without parental consent, yet whether a youth may conversely *refuse* medical treatment is unclear. ORS 109.640 provides in part, "A minor fifteen years of age or older may give consent to hospital care, medical or surgical diagnosis or treatment by a physician licensed by the Oregon Medical Board… without the consent of a parent or guardian…"

Legal experts differ as to whether the law granting minors the power to consent to treatment also grants them the right to refuse treatment. Neither case law nor clear statutory language exists in Oregon to direct the court's interpretation. When presented with an ambiguous statute, the court may consider legislative intent to determine a proper meaning. When ORS 109.640 was enacted in 1971, the intent was to enable young women to receive birth-control information, contraceptives, and abortions without parental consent. A few years later it expanded to include the right for a minor to consent to treatment for sexually transmitted diseases; a few years after that it expanded again to include treatment for mental health and substance abuse. The legislature did not want fear of negative parental reaction, or temporary parental unavailability, to bar minors from seeking important, and possibly life-saving, medical care.

If charged, Mr. and Mrs. Beagley will likely argue that the statute necessarily encompasses the right to refuse treatment. If this does not work, they might try to rely on the common law mature-minor doctrine. Some states recognize the mature-minor doctrine, a judicial rule that may be invoked to justify the provision of health care to a minor who consents when parental authority is not obtained.[2] In jurisdictions that recognize the doctrine, it usually only applies to minors nearing the age of majority who have the capacity to understand the nature and consequences of the medical treatment. The mature-minor doctrine has been invoked to deny medical treatment as well. The Illinois Court of Appeals recognized the mature-minor doctrine when it overturned a trial court's order requiring a life saving blood transfusion.[3] The Illinois Court of Appeals found that a seventeen-year-old Jehovah's Witness was mature enough to appreciate the consequences of her actions and was mature enough to exercise the judgment of an adult.[4] Conversely, the Texas appellate court refused to recognize the mature-minor doctrine, finding a sixteen-year-old Jehovah's Witness to be medically neglected, and authorized a blood transfusion if necessary.[5]

Oregon has not recognized the mature-minor doctrine, though neither the Court of Appeals nor the Oregon Supreme Court has made a ruling either way.[6] Should Oregon recognize the mature-minor doctrine, there may be more hoops a youth wishing to rely on faith healing might still have to jump through. In the New York Case, *In re Long Island Jewish Medical Center*, the court ordered a seventeen-year-old boy to undergo a lifesaving blood transfusion because evidence did not support that he had a mature understanding of his own religious beliefs or fatal consequences of his decision.[7] If the doctrine is accepted in Oregon, Mr. and Mrs. Beagley would likely have the difficult task of proving that their son had a mature understanding of his religious beliefs and that he understood denying himself medical treatment could lead to death.

If charged, Mr. and Mrs. Beagley's main defense will depend on whether their son had a legal right to refuse medical treatment. The U.S. Supreme Court recognized an adult's right to refuse medical treatment in *Cruzan v. Director, Missouri Dep't of Health*; but whether a parent can refuse medical treatment on behalf of a dependent child is another issue. In Oregon, the state may step in to protect the child's right to life. According to ORS 163.206, a parent does not commit reckless endangerment if they choose faith-based treatment for their child at least

Continued on page 7

Faith-Healing

Continued from page 6

fifteen years of age, from a duly accredited practitioner of spiritual treatment as provided in ORS 124.095, in lieu of medical treatment, in accordance with the tenets and practices of a recognized church or religious denomination of which the minor is a member or an adherent. However, ORS 163.005, which deals with criminally negligent homicide, does not afford such a religious exemption. If the child's life is at stake, the state regards the child's right to life as a higher priority than the parent's right to religious practice. In the case of Neil Jeffrey Beagley, the state must decide which priority is higher: a minor's life or his own religious freedom.

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1. Bella, Rick. "Boy's Death Stirs Lawmakers." The Oregonian [Portland] 06 June 2008, sunrise. ed.: C1.

2. Leslie Harris, The Rights of Children and Adolescents, Oregon CLE 2006.

3. *In re E.G.*, 549 NE2d 322, 323 (Ill 1989).

4. *Id.*

5. *O.G. v. Baum*, 790 SW2d 839 (Tex App 1990).

6. *In re Conner*, 207 Or App 223, 228 (2006).

7. 557 NYS2d 239, 243 (NY Sup Ct. 1990).

Texas Polygamist Sect Case Update

Crime Victims United Report Criticizing Detention Reform Deeply Flawed

By Sandy Kozlowski, Law Clerk

In May of 2008, Crime Victims United of Oregon (CVU), a victim's advocacy group, released a report critical of Multnomah County's juvenile justice system for failing to detain more delinquents. The report was written by Ken Chapman, a CVU member and a former juvenile probation officer. (See report at: www.crimevictimsunited.org)

The CVU Report, in its 103 pages, examines the history, development, and proficiency of the Multnomah County juvenile justice system. While such an in depth examination is potentially valuable, this analysis is plagued by an unfortunate number of misconceptions and mistakes. A few key examples readers should be aware of are as follows:

(Continued on p. 12)

FRUSTRATION WITH ICPC REPORTED

An article published on June 27, 2008 in the New York Times reported on the frustration that people are feeling about the Interstate Compact for the Placement of Children (ICPC). The article then details hoped-for developments regarding the ICPC, and recent criticisms of it by specialists in children's law and welfare.

The frustration is illustrated by the example of one woman who has volunteered to take temporary custody of her five grandchildren. Because she lives in Maryland, 15 minutes away from her grandchildren in Washington D.C., she must go through the ICPC process and the children must go to a different foster home until that process is completed, which could take months.

A revised version of the ICPC was created in 2006, which calls for timely decision making and a commission to make rules, but it must be ratified by 35 states to go into effect and only a handful of states have ratified it so far. Also, a federal law was passed that provides incentives for placing children in under 30 days; however, lack of funding has given the law little effect.

Critics say that the revised version does not address all the flaws of the ICPC, including the lack of administrative appeals when a relative is denied guardianship. Further, they claim that the changes need to be written into federal or state laws, and not left to a newly formed commission.

For the full article see:
http://www.nytimes.com/2008/06/27/us/27foster.html?ex=1372392000&en=ab84890d467bd05a&ei=5124&partner=permalink&exprod=permalink

With 24 hour coverage of this child welfare debacle, **Round 1** of the **Texas polygamist sect v. Texas CPS** went to the parents as the Supreme Court of Texas in June affirmed an order directing the juvenile judge to vacate placement orders on more than 400 children, whose removal was not warranted. **Round 2** started August 7th, with Texas CPS seeking placement of 8 of the children back into foster care due to alleged safety plan violations by their mothers, who refused to limit contact with men accused of underage marriage.

KINSHIP CARE FOUND MORE BENEFICIAL THAN FOSTER CARE

PHILADELPHIA, June 2, 2008 -- Children removed from their homes after reports of maltreatment have significantly fewer behavior problems three years after placement with relatives than if they are put into foster care, according to new research at The Children's Hospital of Philadelphia.

The study, which looked at a national sample of 1,309 U.S. children removed from their home between October 1999 and December 2000 following reports of maltreatment, is published in the June issue of the Archives of Pediatrics & Adolescent Medicine. The results of the study provide compelling evidence to support efforts in recent years to identify what is sometimes referred to as "kinship care" as an alternative for placing children into non-relative foster care and to maximize the supports and services that will help children achieve permanency in these settings.

"For a long time people have debated the value of kin in providing both stability and permanency to children in foster care," said David M. Rubin, M.D., M.S.C.E., a pediatric researcher at The Children's Hospital of Philadelphia and lead author of the study. "Our results suggest for the first time, in a national population group, that family care may offer protective value in terms of well-being and stability for children in out-of-home care."

"In the past, what has been difficult to reconcile is whether the benefit of a connection to family exceeds potential risks that children may face because kin caregivers tend to be single, older, of poorer health, of lower economic status, or—some may argue—more likely to share the same issues as those of the birth parents that may have harmed the children," said Rubin. "This debate often has stalled important benefits that would insure prompt access of family caregivers to children, as well as provide the guardianship benefits to help successfully transition them from the child welfare system."

Researchers analyzed data collected from the National Survey of Child and Adolescent Well-Being study mandated by Congress in 1996. Interviews for this study were conducted with children, caregivers, birth parents, child welfare workers, and teachers at the time the child was removed from the home, and at 18 months and 36 months after enrollment. The interviewers measured behavioral well-being with the Child Behavior Checklist.

Three years after placement, nearly two-thirds of the children in kinship care were in long-lasting settings with family that were established quickly after they entered care, compared with only a third of children in foster care who achieved similar stability. The researchers also found that, even after controlling for the children's baseline problems and the extra stability in kinship settings three years after placement, those children placed in early kinship care had only a 32 percent risk of behavioral problems, compared to a risk of 46 percent in children assigned to foster care. Many of these problems were disruptive behaviors and oppositional defiance, in addition to anxiety or depression.

The authors caution that while children cared for by family members fared better than those in foster care, the entire group of children removed from their home showed higher rates of behavioral problems than the general population.

The number of children living with relative caregivers has been increasing in recent years. More than 2.5 million children lived with family members other than a birth parent in 2005, a 55 percent increase from 1990, according to U.S. Census data.

The study findings could strengthen the policy rationale for pending federal legislation that supports expanded assistance and guardianship benefits for family members within or outside of the child welfare system. Although more than 90% of children raised by relatives outside the supervision of the child welfare system, their relationship to the system may be fluid, particularly if services are not provided to support permanent guardianship and if additional assistance is not provided for the behavioral health needs of these children.

The authors also caution that kinship care is not always a realistic option for children removed from the home because of the lack of extended family options that would provide safe alternatives to foster care. For these children, the study demonstrated that preventing placement changes improved behavioral outcomes regardless of the caregiver's relationship to the child. Directing children toward appropriate kinship settings can help alleviate a shortage of quality foster care families best able to provide such stability to those children who lack viable kinship alternatives.

"There is something innate about the family that provides some sense of stability to the child," said Rubin, adding that the magnitude of the effect should be reassuring to child welfare specialists aware of the growing trend toward kinship placements in recent years. "We understand it is not a simple fix and that's why we need to support these families as much as we would a foster care family. The data speaks to the value of kin in providing permanent homes for children; such value needs to be nurtured by our public programs."

For study info: Juliann Walsh, walshj1@email.chop.edu

TEENS AND ADOPTION

Author David P. Kelly's article: "Older Youth and Adoption: Adopting Teen-friendly Practice" in the April 2008 issue of the ABA's CHILD LAW PRACTICE (Vol. 27 No. 2 2008) provides helpful tips for practitioners helping teen clients, whose best permanency option may be adoption.

Empirical data tells us that of the thousands of children awaiting adoption, nearly one-third are between the ages of 11 and 15. There is work to be done on the recruiting side of teen adoption, but this does not reduce the need for a child's attorney and case worker to do what is needed to increase the chances of a teen client being adopted.

There are some common pitfalls to avoid. It is often claimed that for a particular teen, there is no adoptive resource. However, this determination should be monitored continually as it could change over time. The availability of an adoption resource may also depend on the effort put into finding one. Adoption of a teen is a big decision for a relative or a non-relative, so it is imperative to keep revisiting the question and to search for an adoptive resource. Adoption should always be an option.

Another pitfall is that the client is "unwilling" to be adopted. This determination should also be revisited regularly. Once a child's attorney builds trust through meaningful, unhurried face-to-face interactions, the attorney can get to know her teen client. Then the attorney can understand why the client does not want to be adopted. As the attorney, you have a potential to make a great impact through your interest and attention. Perhaps with a fuller understanding of the mechanics and the meaning of adoption, a client can be encouraged to reconsider. Teens often behave as if they know everything they need to know, but this can be a smokescreen. The attorney must ensure that the client is making an informed decision and must respect the enormity of the situation for the client.

The Adoption of Safe Families Act of 1997 (AFSA) encourages permanency for a child through reunification, adoption, permanent legal guardianship, or placement with a fit and willing relative. Another Planned Permanency Living Arrangement (APPLA) is in practice one of the most common permanency goals for teens in foster care but is the least favored permanency goal under ASFA. APPLA should be a last resort, but if used, the child's attorney should take steps to ensure that the APPLA plan is comprehensive, appropriate and is "moving [her] client toward sustainable independence."

Although APPLA is a tempting alternative, it should not be decided on lightly as a permanency goal. If a client *of any age* is not able to be reunified with family, adoption should be seriously considered without giving in to preconceptions about teen adoption

http://www.abanet.org/scripts/ccl/search/cclsearch.jsp

Find the article online using above link – the full text is available if you subscribe to ABA Child Law Practice.

Adoptive Parents Awarded Lost Adoption Subsidies in Federal Court Settlement

In 2003, the state, during budget cuts, unilaterally cut monthly adoptions subsidies by 7.5%. It asserted it could make this decision despite its written contract with each adoptive family. The families took the state to court in a class action, claiming they had a right to individual hearings over the amount of their subsidies. The US District Court found no such right, but the 9th U.S. Circuit Court of Appeals overturned that decision in 2005. The state appealed to the U.S. Supreme Court, but the Court did not grant certiorari.

The parties have now agreed to a $1.7 million settlement. The settlement agreement will be reviewed by the court at a Sept. 24th hearing, where the families will have the opportunity to testify as to the fairness of the settlement. Following court approval each family will be automatically issued a portion of the settlement.

Adoptive families rely on adoption subsidies for important services such as counseling, physical therapy, and pediatric care. The amount of an adoption subsidy is an important part of a family's decision to adopt a special needs child. Without adoption subsidies, many families would not be able to adopt such children, whose care can be prohibitively expensive without the support of the state.

http://blog.oregonlive.com/breakingnews/2008/07/adoptive_parents_to_get_refund.html

Multnomah Co. Early Intervention for Psychosis

Multnomah County has launched a new Early Assessment and Support Alliance (EASA) program. The program is designed to provide early intervention to adolescents and young adults experiencing their first episode of psychosis. Services include: psychiatric medication management, family education and support,
(Continued p. 10)

Case Law—Continued from page 5

the record. The Court further found that the error was grave, misstating the nature and extent of defendant's conduct with possibly significant implications to any future calculation of his criminal history. The Court also concluded that the state had no interest in convicting a defendant twice for the same crime. In weighing the competing interests of the parties, the Court chose to exercise its discretion to correct the error. The convictions for first-degree kidnapping were reversed and remanded with instructions to enter a judgment of conviction for one count of kidnapping, and remanded for re-sentencing.

State ex rel Juv. Dept. v. G.L., 220 Or App 216, 185 P3d 483 (2008): Mother appealed a judgment of dependency jurisdiction, arguing that the state did not have the authority to order her to submit to a psychological evaluation. Mother had an off-and-on relationship with the children's abusive father. She took out two restraining orders against him, both of which she later revoked. She often lied to DHS about whether she was living with Father. DHS, frustrated as to why Mother continued to live with Father despite her statements that he "is dangerous" and they "could not be in a relationship together," requested that the court order a psychological evaluation. The judge found that the evaluation was not necessary but ordered the evaluation, because he believed it might help determine why Mother was failing to protect her children from Father.

Mother challenged the order, arguing that because jurisdiction was not related to any mental health problems, the court could not order a psychological evaluation. The court held that ORS 419B.337 (2), which permits the court to order a specific service, must be read in the context of ORS 419B.343, which requires that DHS's case plan be rationally related to jurisdictional findings. If the court may order specific services, but it is up to DHS to determine the case plan, and the case plan must be rationally related to the jurisdictional findings, then court ordered services must be rationally related to jurisdictional findings.

The Court found that there was a rational connection between the psychological evaluation and the basis for jurisdiction, since jurisdiction was based on Mother's inability to protect her children, and the evaluation was needed to determine whether Mother's behavior was due to an underlying mental condition, which would require specific services. The trial court did not exceed its authority and the order was affirmed.

U.S. v. Juvenile Male, 2009 U.S. App. LEXIS 12551: A minor, R.P., lied to a border patrol agent about his age when he was caught on suspicion of smuggling illegal aliens across the border, representing that he was over 18. One of the arresting agents was informed by a dispatcher of previous DHS records which indicated R.P. was a minor. The Juvenile Justice and Delinquency Prevention Act of 1974 governs arrests and prosecutions of juveniles at 18 U.S.C. § 5014-5042. According to 18 U.S.C. § 5033, when a minor is arrested, agents are required to advise the juvenile of his legal rights, immediately notify the Attorney General and the juvenile's parents, guardian or custodian of such custody, and notify them of the rights of the juvenile and of the nature of the alleged offense. Neither the arresting agent nor any of the border patrol officers attempted to notify the Mexican Consulate or R.P.'s parents of his arrest. 18 U.S.C. § 5036 requires that a speedy trial commence within 30 days of the start of the federal detention of the juvenile on the federal delinquency charge. There is an exception if the minor or his counsel causes a delay or consents to a delay. From his arrest to the commencement of the trial was detained longer than 30 days. At trial, he was found guilty of various juvenile crimes.

R.P. alleges that the Government violated the JJDPA under § 5033 by not complying with § 5033 when there was conflicting information regarding an arrestee's age. R.P. also argued that because § 5033 was not followed, the court erred in not suppressing or dismissing confessions made by R.P. in a videotaped interview the night of his arrest. The Ninth Circuit held that § 5033 applies "whenever a juvenile is taken into custody" regardless of other circumstances, offering no exception for juveniles who lie about their age.

As for § 5036, the Government did not violate the JJDPA's speedy trial provision because the delay was caused by the client lying to officials about his age. The Ninth Circuit affirmed that the Government properly applied the speedy trial provisions of the JJDPA, and reversed in regard to the Government properly following § 5033. The case was remanded to determine if the violation of § 5033 caused R.P.'s confession.

EASA, Cont'd from p. 8

crisis/safety planning, occupational therapy, and vocational/educational support, among others. Those accepted into the EASA program will start getting services immediately.

Program contact: Anne Emmett, LCSW, EASA Program Coordinator at (503) 988-3999 x. 29334 or (503) 209-2738. The referral line is (503) 988-EASA (3272).

JUVENILE DRIVING PRIVILEGES POST-DELINQUENCY ADJUDICATION

By Jennifer Pike, Law Clerk

Juveniles can lose their post-delinquency adjudication driving privileges under numerous statutory bases. The following will describe the most common sources of revocation, suspension and denial of juvenile driving privileges.

ORS § 809.412 authorizes the juvenile court to take action relating to driving privileges as if an adjudication were a conviction, when a child has committed an act that is grounds for suspension or revocation of privileges under ORS § 809.409 or § 809.411.

ORS § 809.409 provides for revocation of driving privileges for conviction of a crime, and applies to convictions for:

- aggravated vehicular homicide
- any degree of murder, manslaughter or criminally negligent homicide resulting from the operation of a motor vehicle
- assault in the first degree resulting from the operation of a motor vehicle
- failure to perform the duties of a driver to injured persons under ORS § 811.705
- perjury or making of a false affidavit to the department under any law of the state requiring vehicle registration or regulating vehicle operation on the highways
- felony with a material element involving the operation of a motor vehicle

Persons whose driving privileges are revoked under § 809.409 or are suspended under § 809.411 are entitled to administrative review under § ORS 809.440.

ORS 809.411 governs suspension for conviction of a crime and governs convictions of:

- reckless endangerment of a person
- menacing or criminal mischief resulting from operation of a motor vehicle
- reckless driving under ORS § 811.140
- failure to perform duties of a driver when property is damaged under ORS § 811.700
- fleeing or attempting to elude a police officer under ORS § 811.540
- reckless endangerment of highway workers under ORS § 811.231(1)
- theft in the first, second, or third degree if the theft was of gasoline
- criminal trespass that involves the operation of a motor vehicle under ORS § 164.245
- any offense described in ORS § 809.310
- assault in the second, third, or fourth degree resulting from the operation of a motor vehicle

Most of the crimes listed in ORS § 809.411 are subject to a suspension schedule listed in ORS § 809.428.

ORS § 809.260 governs denial of driving privileges for adjudicated juveniles, and applies to:

- possession of a firearm or dangerous weapon in a public building or court facility under ORS § 166.370
- discharge of a firearm at a school under ORS § 166.370
- any offense involving the delivery, manufacture or possession of controlled substances
- any offense involving the possession, use or abuse of alcohol

ORS § 809.265 governs suspension for inhalant or controlled substances conviction:

- any offense involving manufacturing, possession or delivery of controlled substances
- driving while under the influence of intoxicants under ORS § 803.010
- a municipal ordinance if the person was under the influence of an inhalant or controlled substance.

Materials Available from the Oregon Child Advocacy Project's Annual Conference

The Oregon Child Advocacy Project hosted a conference entitled ***Putting the Puzzle Together: Cooperation, Conflict and Collaboration Among Juvenile Courts and Child Welfare Agencies***. Speakers included Lois Day (critical decisions within DHS and how to have constructive input); Camilla Johnston (grievances and administrative appeals); Hon. Jack Landau (from termination of parental rights cases); Prof. Leslie Harris (judicial authority to review agency actions); Hon. Leonard Edwards (possibilities for reforming the juvenile dependency court); Hon. David Schuman (state separation of powers and other constitutional issues); Mark Hardin (federal limitations); and Hon. Nan Waller (reducing overrepresentation of minority youth in dependency court). Articles and downloadable audio recordings are available at http://www.law.uoregon.edu/org/child/2008conference.php.

CVU Report Flawed, continued from p. 7

The report's statistical analysis is flawed. The report compares Multnomah County to other counties in Oregon and to state averages. The best statistical comparison would be Multnomah County to itself, because this comparison eliminates variance from socioeconomic differences among counties. The report's comparison also makes the false assumption that all other counties use models of juvenile detention significantly different from Multnomah County. In fact, Oregon counties use a range of different policies, some of which look like Multnomah County's policies and some of which look like CVU's ideal. When compared to itself in the past, Multnomah County has shown slow, steady progress in reducing recidivism and juvenile crime.

The report's surveys are flawed because they provide no point of comparison. The surveys find that juvenile service workers and police officers are disillusioned with the juvenile court system post-detention reform. While these results are interesting alone, they would be much more meaningful with comparative data. CVU could compare this data to how these workers felt about the system before detention reform, or it could compare how police officers feel about the juvenile system to how they feel about the adult system. The adult system takes a punitive approach which is much closer to CVU's model.

The report is devoid of discussion of minority over-representation in detention. Reduction of racially disproportionate detention was an important reason for adoption of the JDAI and the subsequent development of the Risk Assessment Instrument (RAI). Recommendations concerning the use of detention should include discussion of elimination of racial bias.

The report shows a disregard for and misunderstanding of due process. In the report, CVU advocates for doing away with such protections of due process as probation hearings following probation violations. It would prefer to lock youth up based on accusations alone.

The report fails to discuss the impact of detention on youth. The report overstates the services available to youth in detention, for example claiming that school is available. Classes are available only for youth after they have been in detention for more than 5 days, so that most youth miss school when they are in detention. There is also much evidence of the negative behavioral and psychological consequences of detention, which the report fails to address.

The report fails to discuss cross-over cases. CVU claims that the Casey Foundation is ill equipped to address the problem of juvenile delinquency, because it deals primarily with needy children. The CVU fails to address the number of children who appear in court first as victims of abuse and neglect and later as delinquents. It fails to address the relationship between poverty, abuse, neglect, and crime.

The report's voice reveals its bias. The CVU report repeatedly accuses juvenile services of failing to comply with Oregon law, asking Juvenile Services "How about operating within the constructs of Oregon law?" It complains about Multnomah County calling itself a model site, "There is that 'national model' again!" It suggests that it could describe the Casey Foundation "with less than complimentary female stereotypes."

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